

COURT OF APPEALS
DIVISION TWO
OF THE STATE OF WASHINGTON

FILED
COURT OF APPEALS
DIVISION II
2019 MAY -9 AM 11:50
STATE OF WASHINGTON
BY US DEPUTY

STATE OF WASHINGTON)

Respondent,)

v.)

Robbie Lee Fitch)

(your name))

Appellant.)

No. 52697-2-11

STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW

I, Robbie Lee Fitch, have received and reviewed the opening brief prepared by my attorney. Summarized below are the additional grounds for review that are not addressed in that brief. I understand the Court will review this Statement of Additional Grounds for Review when my appeal is considered on the merits.

I.

Additional Ground 1

THE TRIAL COURT FAILED TO SUPPRESS ALL EVIDENCE
TAKEN IN VIOLATION OF CRIMINAL RULE 2.3 (C), WHEREIN
THE WARRANT SHALL BE FOR A "... SPECIFIC PERIOD OF TIME
NOT TO EXCEED TEN DAYS ..." AND THAT "THIS WARRANT
SHALL BE SERVED WITHIN TEN DAYS FROM THE TIME IT IS
SIGNED BY THE JUDGE." SEE ATTACH EXHIBIT A
(CONT. ON ATTACHMENTS) :

Additional Ground 2

If there are additional grounds, a brief summary is attached to this statement.

Date: MAY 4, 2019

Signature: Robbie L Fitch

Form 23

STATEMENT OF ADDITIONAL GROUNDS 1.

II.

FACTS

THE WARRANT WAS SIGNED BY HONORABLE JUDGE KOSS ON FEBRUARY 7, 2017, IN THE MORNING, AM. AND WAS SERVED ON THE DEFENDANT FEBRUARY 17, 2017 AT 12:12, PM., IN THE AFTERNOON, SUBSEQUENT TO THE DEADLINE TO SERVE. "... TEN FROM THE TIME IT IS SIGNED BY THE JUDGE." SEE EXHIBIT A

AT THE TIME THE WARRANT WAS SERVED, IT HAD EXPIRED, EXCEEDING THE TIME ORDERED BY THE COURT, MAKING VOID AT THE TIME OF SERVICE. SEE EXHIBIT A. THEREFORE, NO AUTHORITY OF LAW TO CONDUCT THE SEARCH WAS PRESENT AT THE TIME THE WARRANT WAS SERVED.

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STATEMENT OF ADDITIONAL GROUNDS 2.

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2. amplitude of the wave

III.

ARGUMENT

THE WARRANT SHALL BE SERVED WITHIN TEN DAYS FROM THE TIME IT IS SIGNED BY THE JUDGE. CrR 2.3 (C).

AT ISSUE IS THE PROPER INTERPRETATION OF THE SEARCH WARRANT PROVISION FOUND IN CRIMINAL RULE 2.3 (CrR 2.3) WHICH ESTABLISH PROCEDURES FOR EXECUTING THE SEARCH WARRANT. WHICH READS:

"THIS WARRANT WILL BE SERVED WITHIN 10 DAYS FROM THE TIME IT IS SIGNED BY THE JUDGE."

THE SEARCH WARRANT IS INCORPORATED BY REFERENCE TO THE AFFIDAVIT. SEE EXHIBIT A, PAGE 06/11 AND 11/11.

THE WARRANT WAS SIGNED BY HON. JUDGE KOSS ON FEBRUARY 7, 2017, IN THE MORNING, A.M., AND WAS SERVED ON ROBBIE LEE FITCH, AS THE DEFENDANT ON FEBRUARY 17, 2017 AT 12:12, P.M., IN THE AFTERNOON, SUBSEQUENT TO THE DEADLINE TO SERVE. "...TEN DAYS FROM THE TIME IT IS SIGNED BY THE JUDGE."

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STATEMENT OF ADDITIONAL GROUNDS 3.

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AT THE TIME THE WARRANT WAS SERVED, IT HAD EXPIRED, EXCEEDING THE TIME ORDERED BY THE COURT, MAKING THE WARRANT VOID AT THE TIME OF SERVICE. (SEE EXHIBIT A.) THEREFORE, NO AUTHORITY OF LAW TO CONDUCT THE SEARCH WAS PRESENT AT THE TIME THE WARRANT WAS SERVED.

THE WASHINGTON STATE CONSTITUTION STATES THAT, "NO PERSON SHALL BE DISTURBED IN HIS PRIVATE AFFAIRS, OR HIS HOME INVADED, WITHOUT AUTHORITY OF LAW." WASHINGTON STATE CONST. ART. I, 7.

IN STATE V. THOMAS, 65 WASH. APP. 347, 827 P. 2d 1394 (1992). THE COURT APPEALS STATED, "CR 2.3 COMMAND THAT THE SEARCH TAKE PLACE WITHIN 10 DAYS FROM THE TIME IT IS SIGNED BY THE JUDGE."

AND IN STATE V. THOMAS, 121 WASH. 2d 504 (1993) 851 P. 2d 673. THE SUPREME COURT OF WASHINGTON STATED A "COURT RULE MUST BE CONSTRUED SO THAT NO WORD, CLAUSE OR SENTENCE IS SUPERFLUOUS, VOID OR INSIGNIFICANT... WHEN THE LANGUAGE OF A RULE IS CLEAR, A COURT CANNOT CONSTRUCT IT CONTRARY TO ITS PLAIN STATEMENT." CITING STATE V. RADER, 47 WASH. APP. 530, 536, 736 P. 2d 680. REVIEW DENIED, 108 WASH. 2d 1023 (1987)

STATEMENT OF ADDITIONAL GROUNDS 4.

At the time the program was started, the explicit expectation was that the program would be a success. The program was started in 1967, and the first results were reported in 1968. The program was a success, and the results were reported in 1968.

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Continued to be a success, and the results were reported in 1968.

THEREFORE BECAUSE THERE IS NO RECORD
DETAILING WHAT TIME THE SEARCH WARRANT WAS
SIGNED BY JUDGE KOSS. THERE IS A FAILURE TO
ABIDE BY THE LIMITATIONS OF THE SEARCH WARRANT.
... WHEN THE LANGUAGE OF A RULE IS CLEAR,
... "TEN DAYS FROM THE TIME IT IS SIGNED BY THE
JUDGE." A COURT CANNOT CONSTRUCT IT CONTRARY
TO ITS PLAIN STATEMENT."

CONCLUSION

THE SEARCH IS ILLEGAL. AND ALL EVIDENCE TAKEN
CONCURRENT AND SUBSEQUENT TO THE SEARCH,
INCLUDING BUT NOT LIMITED TO, STATEMENTS MADE
CONCURRENT OR SUBSEQUENT TO ARREST, IS TAINTED,
AND IS "... FRUIT OF THE POISONOUS TREE," AND THAT
SUPPRESSION IS THE REMEDY. NARDONE VS. US. 308
US. 338 (1993)

THE APPELLANT'S STATEMENT OF ADDITIONAL
GROUND FOR REVIEW IS WITH MERIT

RESPECTFULLY SUBMITTED THIS 4TH DAY OF MAY,
2019.

Robbie L. Fitch

ROBBIE LEE FITCH
DOC # 376031

STATEMENT OF ADDITIONAL GROUNDS 5.

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The search is done. The difference between
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is about 10% of the total length.

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EXHIBIT A

**DISTRICT COURT OF WASHINGTON
FOR COWLITZ COUNTY**

STATE OF WASHINGTON,

Plaintiff

vs.

2008 46th Avenue #A
Longview, WA
green duplex with white trim
&
Robbie Lee Fitch
DOB 12/6/70
White male blonde with
blue eyes, 6' 2" and 200 lbs.

Defendant

No.

SEARCH WARRANT**TO: THE SHERIFF OR ANY CONSTABLE OF COWLITZ COUNTY**

Complaint having been made on oath before me by Seth H. Libbey, that he has reason to believe and does believe that evidence of the crimes of possession, delivery or conspiracy to deliver a controlled substance can be found in a green with white trim two story duplex w/attached garage, at 2008 46th Avenue #A, Longview, Cowlitz County Washington and the person Robbie Lee Fitch DOB 12/06/1970, a white male with blonde hair and blue eyes. The attached affidavit for search warrant (Exhibit A) is incorporated herein by reference.



There is now being concealed or kept certain property, to wit:

- a. Controlled substances including, but not limited to **methamphetamine**.
- b. Paraphernalia for using, packaging, processing, weighing and distributing controlled substances, including, but not limited to scales, funnels, sifters, grinders, containers, plastic bags or materials used to contain controlled substances, heat-sealing devices, diluents/dilutants, and the like;
- c. Personal books, letters, papers, notes, pictures, photographs, video and/or audio cassette tapes, computers, palm pilots, cell phones, pagers or documents relating names, addresses, telephone numbers, and/or other contact/identification information relating to the possession, processing, or distribution of controlled substances;
- d. Books, records, receipts, notes, letters, ledgers, and other papers relating to the possession,

processing, or distribution of controlled substances;

e. Cash, U.S. currency, foreign currency, financial instruments, and records relating to income and expenditures of money and wealth from controlled substances including, but not limited to money orders, wire transfers, cashier's checks or receipts, bank statements, passbooks, checkbooks, and check registers;

f. Items of personal property which tend to identify the person(s) in residence, occupancy, control or ownership of the premises that is the subject of this warrant, including, but not limited to canceled mail, deeds, leases, rental agreements, photographs, personal telephone books, utility and telephone bills, statements, identification documents, and keys;

g. Cellular telephones and the contents of the cellular telephone including but not limited to call logs, contact information, text messaging, emails and electronic photographs.

A copy of the warrant and a receipt for the property taken shall be given to the person from whom or from whose premises property is taken. If no person is found in possession, a copy and receipt shall be conspicuously posted at a place where the property is found.

I am satisfied that there is probable cause to believe that the said property is being concealed or kept in/on the described residence, green with white trim two story duplex w/attached garage, at 2008 46th Avenue #A, Longview, Cowlitz County Washington and the person Robbie Lee Fitch DOB 12/06/1970, a white male with blonde hair and blue eyes and that grounds for application for issuance of this search warrant exist.

Therefore, you are hereby ordered to search the above named green with white trim two story duplex w/attached garage, at 2008 46th Avenue #A, Longview, Cowlitz County Washington and the person Robbie Lee Fitch DOB 12/06/1970, a white male with blonde hair and blue eyes for the described property specified, serving this warrant, and if the property be found to seize it, leaving a copy of this warrant, and prepare a written inventory of the property seized, and return this warrant and the property seized before me or before some other magistrate or court having cognizance of this case.

A copy of the warrant and a receipt for the property taken shall be given to the person from whom or from whose premises property is taken. If no person is found in possession, a copy and receipt shall be conspicuously posted at a place where the property is found.

This warrant will be served within 10 days from the time it is signed by the judge. The search warrant is incorporated by reference to this affidavit.

☐ [CHECK IF SUBMITTING BY ELECTRONIC DEVICE] This declaration was submitted to the issuing judge or magistrate using an electronic device that is owned, issued, or maintained by the below-identified criminal justice agency.

This warrant was issued by the above judge, pursuant to the procedures authorized by RCW 10.79.035, CrR 2.3 and CrRLJ 2.3 on _____ at _____ (time).

Distribution if warrant obtained in person—Original (Court Clerk); 1 copy (Prosecutor), 1 copy (Officer). Distribution if warrant obtained telephonically—If search warrant was obtained telephonically, this complaint must be read in its entirety to the judge. The judge should place the officer under oath prior to the reading. Original (Prosecutor); 1 copy (Officer).

Distribution if warrant obtained by e-mail—If search warrant was obtained by e-mail, this entire complaint must be sent to the judge for the judge to read. A printout of all e-mails related to this warrant must be distributed with the warrant. Original (Prosecutor); 1 copy (Officer).

DATED this 7th day of February, 20 17.

[Signature]
MAGISTRATE

STATE OF WASHINGTON)
COUNTY OF COWLITZ) ss

I certify that I received the attached warrant on the 7th day of FEBRUARY, 20 17, and have executed it as follows:

On FEBRUARY, 2017, at 12:18 o'clock P.M., I searched the RESIDENCE described in the warrant and left a copy of said warrant ON KITCHEN COUNTER.

Attached is an inventory of property taken pursuant to the execution of the search warrant.

DATED this 17th day of FEBRUARY, 20 17.

by: [Signature]
Detective S. Libbey
Longview Police Dept.

**DISTRICT COURT OF WASHINGTON
FOR COWLITZ COUNTY**

STATE OF WASHINGTON,

Plaintiff

vs.

2008 46th Avenue #A
Longview, WA
Green duplex with white trim
&
Robbie Lee Fitch
DOB 12/6/70
White male blonde with
blue eyes, 6' 2" and 200 lbs.

Defendant

No.

**COMPLAINT AND AFFIDAVIT
FOR SEARCH WARRANT**

STATE OF WASHINGTON)

County of Cowlitz)

ss

I, Seth H. Libbey, after being duly sworn on oath, depose and say that I am a commissioned Police Officer with the Longview Police Department in Longview, Washington and have been so employed since February 2009. I am currently a Detective assigned to the Longview Police Department Street Crimes Unit. The Street Crimes Unit is tasked with the investigation of narcotics violations, firearms violations, gang-related crimes, intelligence gathering, and special surveillance duties. As a result of these investigations, I have made over 100 arrests involving the use of controlled substances and associated paraphernalia. I have further seized over 1000 grams of illegal narcotics and \$50000 in currency from narcotics sales.

I have had numerous phases and courses of police training. I graduated from the Washington State Law Enforcement Training Academy in Burien, Washington in July 2009, which included a course of instruction in narcotics recognition and narcotics law enforcement. I am a graduate of the Drug Enforcement Administration's basic drug investigator's course at Camp Murry Washington in April 2012.

I was contacted by a confidential informant, hereby referred to as X. The contact was in reference to methamphetamine being sold at 2008 46th Avenue #A in Longview WA, Cowlitz County, by a male known as "Rob Fitch." "Rob Fitch" has been identified via known photo as Robbie Lee Fitch DOB 12/6/1970, a white male with blonde hair and blue eyes. I have received intelligence information from multiple sources and investigations indicating FITCH is trafficking illegal narcotics.

X has provided accurate and reliable information regarding narcotic trafficking in the past. The information has been verified with and utilized to facilitate multiple drug trafficking convictions, ongoing investigations and cooperation with outside law enforcement agencies. X stated he/she has used methamphetamine, heroin, cocaine, ecstasy, psilocybin mushrooms and

pain pills in the past. X advised that he/she is familiar with numerous illicit drugs their sales and their packaging. Based on X's acquaintances and drug history, he/she is familiar with how drug transactions are arranged and completed.

Within the last seventy - two hours and operating under the direction of Longview Police Street Crimes detectives, X was invited into the residence and he/she observed a substance that appeared from his/her knowledge and previous drug history to be consistent with that of methamphetamine. X described the substance as a crystal substance packaged in plastic. X observed the packaged amount appeared to be consistent from his/her personal experience, with more than an ounce methamphetamine. I have spoken with X on multiple occasions and know he/she is familiar with heroin as well as its packaging and weight representation. X advised the presence of scales used to measure methamphetamine for distribution within the residence. He/she advised FITCH had indicated the crystal substance he commonly secretes in his residence is methamphetamine. X was also provided the cell phone number to contact FITCH regarding narcotic trafficking communications. X ADVISED ME THAT FITCH IDENTIFIED THE RESIDENCE AS HIS. 2

X's past experience makes him/her very familiar with drug culture and related activities. X has recognized the amounts observed to be consistent with a narcotics dealer. From my training and experience I know narcotics dealers who deal with approximately 1 ounce quantities of methamphetamine are well established and far beyond user amounts.

I know from my training and experience as a detective in the Street Crimes Unit that those involved in narcotics trafficking often use cellular telephones to communicate and facilitate their drug enterprise. These communications include but are not limited to voice to voice contact, text messaging, and photos sent via electronic mail. These text messages and photos are often stored in the messaging portion of the cellular telephone. I also know narcotics traffickers often store the phone numbers of their customers and of their suppliers in the contact portion of their cellular telephone for easy access and convenience. These numbers are instrumental in identifying additional narcotic customers and suppliers. X has witnessed this in FITCH's case as described above.

I have personally seen the residence at 2008 46th Avenue #A in Longview, WA. 2008 46th Avenue #A, Longview WA, is a green with white trim, two story duplex. The front door to the residence is located on the south side of the house. The duplex is located in the 2000 of 46th Avenue. The numbers "2008" are displayed on the power box between the two units. The letter "A" is displayed near the front door of FITCH's side. "A" unit is on the west side of the building. The door is located on the south west corner of unit "A". DO NOT RECORD FOR FITCH
NOT THE ABOVE ADDRESS. 2

I have observed the residence in person. I collected a photograph of the residence located at 2008 46th Avenue #A, which is consistent with my observations and attached it below. X identified FITCH from a photograph recovered from local records. I attached the photograph below.



I believe that the identity of X needs to be kept secret because his/her usefulness would cease immediately if he/she was identified. In addition, I have heard that people who cooperate with the police would be harmed or otherwise injured if their identities are known.

Wherefore, I pray that a search warrant be issued (a copy of which is attached hereto and incorporated by reference herein) to any peace officer in Cowlitz County, Washington, commanding him to search the above-described, green with white trim two story duplex w/attached garage, at 2008 46th Avenue #A, Longview, Cowlitz County Washington and the person Robbie Lee Fitch DOB 12/06/1970, a white male with blonde hair and blue eyes.

There is now being concealed or kept certain property, to wit:

- a. Controlled substances including, but not limited to Methamphetamine.
- b. Paraphernalia for using, packaging, processing, weighing and distributing controlled substances, including, but not limited to scales, funnels, sifters, grinders, containers, plastic bags or materials used to contain controlled substances, heat-sealing devices, diluents/dilutants, and the like;
- c. Personal books, letters, papers, notes, pictures, photographs, video and/or audio cassette tapes, computers, palm pilots, cell phones, pagers or documents relating names, addresses, telephone numbers, and/or other contact/identification information relating to the possession, processing, or distribution of controlled substances;
- d. Books, records, receipts, notes, letters, ledgers, and other papers relating to the possession, processing, or distribution of controlled substances;
- e. Cash, U.S. currency, foreign currency, financial instruments, and records relating to income and expenditures of money and wealth from controlled substances including, but not limited to money orders, wire transfers, cashier's checks or receipts, bank statements, passbooks, checkbooks, and check registers;
- f. Items of personal property which tend to identify the person(s) in residence, occupancy, control or ownership of the premises that is the subject of this warrant, including, but not limited to canceled mail, deeds, leases, rental agreements, photographs, personal telephone books, utility and telephone bills, statements, identification documents, and keys;
- g. Cellular telephones and the contents of the cellular telephone including but not limited to call logs, contact information, text messaging, emails and electronic photographs.

A copy of the warrant and a receipt for the property taken shall be given to the person from whom or from whose premises property is taken. If no person is found in possession, a copy and receipt shall be conspicuously posted at a place where the property is found.

This warrant will be served within 10 days from the time it is signed by the judge. The search warrant is incorporated by reference to this affidavit.

☐ [CHECK IF SUBMITTING BY ELECTRONIC DEVICE] This declaration was submitted to the issuing judge or magistrate using an electronic device that is owned, issued, or maintained by the below-identified criminal justice agency.

I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge, information and belief.

Signed this 7th day of February, 2017, at

Longview, Washington.

Law Enforcement Officer's Signature

3L43

Law Enforcement Officer's Full Name

Detective Seth H. Libbey

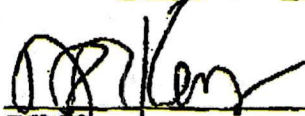
Agency Badge/Serial or Personnel Number

3L43

Agency Name

Longview Police Department

SUBSCRIBED AND SWORN to before me this 7th day of February, 2017.


JUDGE

Distribution if warrant obtained in person—Original (Court Clerk); 1 copy (Prosecutor); 1 copy (Officer).

Distribution if warrant obtained telephonically—If search warrant was obtained telephonically, this complaint must be read in its entirety to the judge. The judge *should* place the officer under oath prior to the reading. Original (Prosecutor); 1 copy (Officer).

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MAGISTRATE